In the High Court of Uttaranchal, at Nainital.

Criminal Appeal No. 1308 of 2001

(Old No. 1378 of 1992)

Sushil Nautiyal S/o Guna Nand,

R/o village Marora, Patti Idwallsyun,

District Pauri Garhwal -- Appellant.

Vs.

State of Uttaranchal --- Respondent.

Sri Rajendra Kotiyal, learned counsel for the appellant.
Sri D.K. Sharma, learned G.A.

Coram: Hon'ble P.C. Varma, J.

Hon'ble B.C. Kandpal, J.

Dated: 22-02-2006

(Per: Hon'ble B.C. Kandpal, J.):

The present appeal has been preferred by the appellant against the judgment and order dated 30-7-1992, passed by the then Sessions Judge, Pauri Garhwal in S.T.No. 28/1988, whereby the accused-appellant Sushil Nautiyal was held guilty for the offences under Sections 302 and 201 I.P.C. and convicted and sentence to undergo life imprisonment under Section 302 I.P.C. and to undergo three years R.I. under Section 201 I.P.C. However, both the sentences were directed to run concurrently.

2- Brief facts of the case are that the accused/appellant was employed as a teacher in Government Inter College at Thalisain. He got married with Smt. Deepa Devi on 9-5-1986. The accused often made demand of dowry from the parents of Smt. Deepa Devi, but they were unable to fulfill the demand. A letter was also received from the accused to indicate that he was not happy with Smt. Deepa Devi. Deepa Devi thereafter went to Thalisain to reside with her husband. On 13-4-1988 at about 9-30 A.M. Smt. Deepa Devi died at the residence of the accused in suspicious circumstances. About the death of Smt. Deepa Devi the accused gave written report, Ext. Ka. 3 at the patwari circle choparakot. Sri Chaman Singh, Patwari on receipt of the above report, reached at the spot and

performed inquest on the dead body of the deceased and prepared the inquest report, Ext. Ka. 4. he prepared challan dead body, photo sketch of dead body, letter to Medical Officer, Exts. Ka. 5 to 7 respectively and sent the dead body for post mortem. The Patwari also prepared memo Ext. Ka.8. for the recovery of the dead body of Smt. Deepa Devi. The same day he inspected the place of occurrence and prepared site plan, Ext. Ka.9. The I.O. also took in to possession the burnt saree, plastic can, burnt bag and a pair of chappals (material exhibits 1to 4) and also prepared recovery memo, Ext. Ka. 10.

3- The autopsy on the dead body of the deceased was performed by Dr. G.S. Rawat and Dr. Rajeev Hatwal, Medical Officers District Hospital Pauri Garhwal on 14-4-1988 and prepared the post mortem report, Ext. Ka. 15.

4- On 30-4-1988 a written complaint was sent by Dinesh Chandra Dimari, the brother of the deceased Smt. Deepa Devi, to the District Magistrate, Pauri Garhwal complaining therein that the accused was making demand of dowry and he was not happy with his wife and the death of Smt. Deepa Devi was not in normal circumstances but she was murdered by her husband. The said written complaint (Ext. Ka.2) was received by the Patwari on 8-5-1988 and on the basis it he prepared chick F.I.R.(Ext. Ka.11) and registered a case under Section 304-B/201 I.P.C. against the accused in the general diary. The Patwari investigated the case and after completion of the investigation submitted charge sheet (Ext. Ka.13) against the accused.

5- On committal of the case of court of Sessions, the Sessions Judge framed charges under Sections 302 and 201 I.P.C. against the accused. He pleaded not guilty and claimed to be tried.

6- The prosecution in order to prove its case examined seven witnesses. P.W.1, Mohan Prasad Pokhariyal was also residing in the same building in which the accused and his wife were residing at the time of the incident. This witness stated that on 13-4-1988 he went to his office and at about 12.30 in

the noon when he want to treasury and there from outside some one told that the house has caught fire and when he came out side the treasury he saw that the house in which he was residing was caught by fire and smoke was coming out from it. He rushed there and saw that the accused Sushil Nautiyal was standing in the middle of his kitchen and something was burning in the kitchen of Sushil Nautiyal. He also stated that Upendra Kukreti took out the girl of Sushil Nautiyal in his lap and carried in the field in the backside of the kitchen. He further stated that he took out a bucket filled with water from his kitchen and thrown inside the kitchen of the accused in order to extinguish the fire. He also deposed that he himself did not see inside the kitchen of the accused but the people standing there were telling that some one had burnt and died . This witness was declared hostile on the request of the prosecution.

7- P.W.2, Dr. G.S. Rawat along with Dr. Rajeev Hatwal has performed autopsy on the dead body of the deceased. According to him the death of the deceased had occurred about one day ago. The examination of this witness was deferred to the next day but thereafter he could not appear before the court.

8- P.W.3, Ballabh Prasad is the father of the deceased. According to this witness his daughter the deceased after one month of the marriage came to her Maika and told him that her husband used to torture her by stating that her parents have given nothing in the dowry and he also used to tell her that she was black and he did not like her. He further stated that about three months before the incident his daughter came to him and after staying at his home for one and a half month, she had gone to Thalisain to reside there with her husband. On 14.4.1988 a teacher came to him to inform to reach Thalisain and on 15-4-1988 this witness started journey to Thalisain and when he reached at Srinagar he met with a teacher and A.D.O. who informed him about the death of his daughter and also informed that her dead body was also cremated. This witness also stated that he wrote letter to his son about the death of Smt. Deepa Devi. This witness also deposed that

prior to the incident he also sent letter to the accused and the reply was sent by the accused on 4.2.1988 (photo copy is Ext. ka. 1), in which he wrote himself the enemy of his inlaws.

9- P.W.4, Dinesh Chandra Dimari is the informant. He has proved the written complaint, Ext. Ka.2. This witness also deposed that whenever his sister used to come to her Maika she had complained about the torture and dowry demand made by her husband.

10- P.W.5, Madho Singh has not supported the prosecution case and he was declared hostile on the application of the prosecution.

11- P.W.6, Chaman Singh, Patwari is the Investigating Officer of the incident. He has deposed about the steps taken by him during the investigation and proved the various prosecution papers as referred above.

12- P.W.7, Dr. Rajeev Hatwal, has conducted post mortem on the dead body of Smt. Deepa Devi. According to him rigor mortis was present on both the hands and feet of the deceased. Her eyes were closed. Tongue of the deceased was found out of mouth and between the teeth and faecal matter was coming out from the anus. He found the following ante mortem injuries on the person of the deceased.

1- No external or ligature mark on the neck.

2- Extra-vasation of blood in to the subcutaneous tissues as well as in the adjacent muscles of the neck. laceration of the sheath after carotid-artigs. Larynx and trachea were congest and contained mucus.

Post mortem burns:

1- Line of redness absent.

2- Visitation absent.

3- Burns were dull white appearance with opening of skin glands coloured grey.

In the internal examination brain and brain membranes were hyperemic. Lung membranes were also hyperemic. The internal organs were roasted and peculiar order.

In the opinion of this witness the death was caused due to

shock as a result of strangulation and the death could be caused on 13-4-1988 at about 9.30 A.M. This witness also proved the post mortem report Ext. Ka.15.

13- The accused in his statement under Section 313 Cr.P.C. did not admit the accusation and stated that he did not know the caused of death of the deceased. He also denied the letter Ext. Ka.1 and stated that he had not written the said letter. However, he examined Jagdish Prasad, D.W.1 in defence. This witness is the neighbour of the accused and has been examined to prove that the accused did not make any demand of dowry and the relations between the accused and the deceased were cordial. This witness also proved Ext. Ka 28 said to be written by the deceased.

14- The learned Sessions Judge after hearing the learned counsel for both the parties and perusing the evidence on record came to the conclusion that the accused has committed the murder of his wife Smt. Deepa Devi and thereafter set her to fire in his house with the intention of screening himself from legal punishment and he accordingly convicted and sentenced the accused under Section 302 and 201 I.P.C. as aforesaid.

15- Aggrieved from the impugned judgment and order, the appellant has come up in appeal before this court.

16- We have heard the learned counsel for the parties and perused the evidence on record.

17- The prosecution case however is that Smt. Deepa Devi was strangulated and died due to strangulation and thereafter she was set to fire, hence there were post mortem burn injuries on her person. Before coming to a definite conclusion, we will have to discuss the clinching and most material circumstances of the case.

18- First of all we will discuss with regard to the motive available with the accused/appellant for committing the crime. Learned counsel for the appellant argued that the motive has been alleged only to falsely implicate the accused/appellant in this crime. He has submitted that since there is no demand of

dowry, therefore no motive was available with the accused/appellant to commit this crime.

19- We do not agree with the argument advanced by the learned counsel for the appellant. It is clear from the circumstances available on the record that the appellant was pressurizing Deepa Devi to go to the village house in order to look after his parents and as Deepa Devi was not ready to go to the village home, which led altercation and quarrel between Smt. Deepa Devi and her husband (accused). P.W.3 Ballabh Prasad, father of the deceased, has deposed before the trial court that his daughter used to tell him with regard to the atrocities committed by her husband. Ex.Ka.1 is the photo copy of the letter dated 4.2.1988 which was sent by the accused and this letter shows that the accused was not happy with the conduct of his wife Smt. Deepa Devi. This letter also shows that there were tense relations between the two. The last word mentioned in the letter addressing the accused himself as “Dusman” indicates the tense relations between the two families and it is, therefore, very much clear that the accused was very much aggrieved with his wife and this circumstance is sufficient to prove the motive to the accused to commit the crime.

20- Learned counsel for the appellant has further argued that the first information report in this case is highly belated. According to his submission the incident had taken place on 13-4-1988 while the first information report was lodged on 30-4 1988 by P.W.4, Dinesh Chandra Dimari and there is no sufficient explanation with regard to this delay. He tried to convince us with regard to the conduct of the accused/appellant by making the submission that it was the accused/appellant who lodged the first information report promptly, i.e., on the date of the incident, i.e. 13.4.1988 at 2 p.m. with Patwari Patti Choparakot.

21- We again fail to appreciate the submission advanced by the learned counsel for the appellant. The alleged first information report by the accused himself on the date of the incident appears to be a motion to deviate the concentration of

the people from the actual commitment of the crime, as by lodging this report the accused tried to show that he was actually innocent.

22- We find that in the report dated 30-4-1988 lodged by Dinesh Chandra Dimari, there is sufficient explanation with regard to the delay. P.W.3 Ballabh Prasad is the father of deceased as well as of complainant has deposed that a teacher came to him on 14.4.1988 to inform that Deepa Devi was ill hence on 15.4.1988 he was going to the village of the accused then he met the same teacher at Srinagar who told him that Deepa Devi had died and had already been cremated. P.W.3, Ballabh Prasad thereafter did not find any occasion to go to the village of the accused when it was know to him that Deepa Devi had already been cremated, rather he intended to take action against the accused, hence he returned to his house and wrote a letter to his son Dinesh Chandra Dimari who was posted at a different place in District Chamoli and Dimari Chandra after reaching to the village filed the report. It is clear from the record that Ballabh Prasad was residing in District Chamoli while the occurrence took place in interior place of District Pauri Garhwal. Keeping in view the distance of these two places it appears to be quite natural that the father to the deceased would have certainly tried to call his son for taking action, hence the delay in lodging the report is properly explained and convincing.

23- Learned counsel for the appellant has further argued that the prosecution has charged the accused for an offence under Section 302 I.P.C. and there is no direct evidence of murder while the circumstances in the case, if are considered, then it will be a case of no evidence.

24- We again fail to appreciate this argument. P.W.1, Mohan Prasad of course did not fully support the prosecution case and was declared hostile, but from his evidence it is clear that at the time of the occurrence the accused was present in his house. He has deposed that as soon as there was he and cry he reached to the place of occurrence and he saw the accused/appellant

standing in the mid of the kitchen. In case if the appellant would have been either at his school or out of his house, he could not have reached inside the kitchen in such a short time. The presence of the appellant at the scene of the occurrence tells the entire tale itself. The conduct of the appellant is such that it was he only who could be linked with this crime. P.W.1, Mohan Prasad has although been declared hostile, but the entire scrutiny of his deposition would reveal that nowhere he has stated that the appellant tried to extinguish the fire. The accused was present in the house and found his wife to be in flames but did not try to rescue her. There is no mark of burn injury on the person of the accused. P.W.1 has clearly deposed that the appellant did not try to rescue his wife, rather he was standing in the kitchen. He has also deposed that it was he who first tried to extinguish the fire by putting the water bucket on the person of the deceased. Therefore, it is quite clear that the appellant let his wife to die and this conduct shows that it was the appellant and none-else who had committed this crime.

25- Learned counsel for the appellant has further argued that the prosecution could not establish the exact cause of death of the deceased. He has also submitted that the medical version also cannot be said to be reliable. He invited our attention to the statement of P.W.7, Dr. Rajeev Hatwal and has tried to convince us that the death has not taken place in the manner as has been alleged by the prosecution.

26- We do not find any force in this argument. The evidence of Dr. Rajeev Hatwal is relevant as there is no evidence available on the record as to how Smt. Deepa Devi died, except the evidence Dr. Rajeev Hatwal. P.W.1, Mohan Prasad has nowhere stated as to how Deepa Devi died and therefore has been declared hostile. P.W.5, Madho Singh has also been declared hostile. As far as P.W.3 and P.W.4 are concerned, they are father and brother of the deceased and they were also not present at the time of the occurrence. Therefore, it is the conduct of the accused as well as his presence at the place of the occurrence and the medical evidence is of great importance.

P.W.7, Dr. Rajeev Hatwal has conducted the autopsy on the body of the deceased and he stated in his evidence that the death was caused due to shock as a result of strangulation. The doctor in examination-in-chief has stated that although there was no external ligature mark on the neck but extra vacation of blood was found in the subcutaneous tissues as well as in the adjacent muscle of the neck. The doctor also found larynx and trachea congested. The doctor opined that these were the ante mortem injuries. He also opined that the burns were post mortem. The doctor also found that the tongue of the deceased was found out of mouth and between the teeth. He also found that the faecal matter was coming out from the anus. The doctor in his cross-examination has stated that the line of redness was absent and he admitted that there could be absence of line of redness in ante mortem burn injuries if somebody is weak. In this case there is no reason for this probability because P.W.4, Dinesh Chandra Dimari in his deposition has stated that deceased Smt. Deepa Devi was hale and hearty and had no illness. There is nothing to show or suggest that at the time of the death Smt. Deepa Devi was weak or ill. Therefore, this suggestion put to doctor is of no avail. The doctor however admitted that the burn injuries were of such nature that the death could take place just after the burning. However it could be in a case of thermal burn injuries and there is nothing to suggest that the injuries could be caused in such a way or could be thermal burn injuries. The deceased was found in the kitchen and in the kitchen it was not possible for her to sustain such type of injuries. Dr. Hatwal, P.W.7 has also admitted that the mark of asphyxia has not been specifically mentioned in the post mortem. He stated that asphyxia shall be deemed in a case of strangulation. The doctor has also stated that the death was actually due to strangulation or shock and he also stated that because there was extra vacation of the blood in the neck, hence it was found that it was a case of strangulation.

27- Learned counsel for the appellant has invited our attention towards the evidence of doctor in order to show that

Deepa Devi could have been died on account of suffocation but we find that there is no explanation of ante-mortem injury No.2 and after such an injury was found on the person of the deceased then it was certainly a case of strangulation ever if the mark of ligature was not found present. As per the statement of the doctor it is not necessary that all the symptoms which were suggested by the defence must be found in a case of strangulation.

28- The record reveals that a suggestion has been put to the doctor that in a woman is burning in Chulha and if her face came over Chulha then suffocation could be caused due to smoke but in the instant case there is no evidence whatsoever that just before the occurrence the deceased was burning Chulha. It is not on the record that at the time of occurrence the Chulha or stove was burning. The inspection note of the site prepared by the I.O. also does not indicate that the Chulha or stove was burning at the place or the occurrence. The circumstances nowhere disclose that it could be a case of accidental fire or a case of suicide by the deceased by pouring the kerosene oil and putting herself to fire. The ante-mortem injuries found on the body of the deceased are making the picture very clear and convincingly pointing out towards this aspect that it could be a case of strangulation and after strangulating the deceased, she was put to fire in order to cause the certain evidence of such offence to disappear.

29- Learned counsel for the appellant has cited before us the case of **Arvind Singh versus State of Bihar (2001) 6 Supreme Court Cases 407** and has submitted that it was initial burden on the prosecution to prove the appellant's guilt beyond reasonable doubt and unless initial burden is discharged, the appellant's conviction is not sustainable. We have gone through the judgment cited before us carefully and we are of the view that the facts and circumstances of the present case are totally different and the ration propounded by the Hon'ble Supreme Court in the cited case before us do not apply to the facts and circumstances of the present case.

30- Learned counsel for the appellant on the basis of the aforesaid judgment has also tried to submit that if burn is of distinctive shape, a corresponding hot object may be identified being applied to the skin and thus abrasions will have distinctive patterns. Again we do not find any force in this argument. The judgment which has been referred before us is related with regard to the thermal injury but in this case there is nothing to suggest that the injuries could be caused in such a way or could be thermal burn injuries.

31- Learned counsel for the appellant has further cited the case of **Babu Ram versus State of M.P. (2002) 2 Supreme Court Cases 502** and has submitted that where the medical evidence is uncertain in terms then it is not safe to rely on the same. He has submitted that the cause of strangulation of deceased by the accused/appellant is not established on the basis of the evidence of the doctor, therefore, the conviction of the appellant is base on wrong footing.

32- Again we are of the view that the judgment cited before us is not applicable to the facts and circumstances of the present case. In the instant case the evidence of the doctor cannot be said to be uncertain in terms. The doctor has categorically deposed in his evidence before the court that there was extra vasation of the blood in the neck and the tongue was protruding out of mouth and it was between the teeth. The doctor also found that the faecal matter was coming out from the anus. These are the sufficient circumstances to show that the deceased was strangulated. Moreover the doctor has found these symptoms of strangulation as an ante mortem injuries. The burn injuries have been opined by the doctor as post mortem injuries, therefore, the ruling cited by the learned counsel for the appellant before us is not applicable in this case.

33- The learned counsel for the appellant has also cited the case of **A.K. Srivastava and others versus State 1979(Vol.3) Allahabad Criminal Ruling(Lucknow Bench) 273** and has submitted that in case of burning if the tongue of deceased

coming out is not an indication of the fact that she was murdered by strangulation. The judgment cited before us does not help the appellant is any manner as in the instant case the cause of the death is not on account of burn injuries.

34- Learned counsel for the appellant has further cited before us the case of **Archi Nawal Kishore Kujur versus State of Bihar 1995(4) Patna High Court (DB) 855.** We have gone through this judgment and we are of the definite view that this judgment is not going to help the appellant in view of the different facts and circumstances of the present case.

35- Learned counsel for the appellant has further cited before us the case of **State of T.N. versus P. Muniapan (1998) 1 Supreme Court cases 515** and has submitted that in case if the medical opinion is expressing two different views and the homicide not completely ruled out by the doctor then the medical evidence cannot be taken in conjunction with other evidence.

36- We have also carefully scrutinized the judgment cited before us. This judgment is not going to help the appellant in any way. It is rather against the appellant as the Hon'ble Supreme Court in the decision cited before us has observed that in a case of circumstantial evidence where death of wife has taken place by hanging, the circumstantial evidence were found sufficient to conclusively establish the guilt of the accused and the Hon'ble Apex Court has noted down the circumstances as follows:-

(i) Accused had strong motive to put the deceased out of the way before his petition for divorce was taken up for hearing. He was repeatedly insisting upon her consent for his second marriage or divorce.

(ii) He was the only other occupant of the house in which his wife met with the unnatural end.

(iii) His varied explanations for sleeping separately outside the house totally unbelievable.

(iv) Burn injuries on the body of the deceased which were not in existence on previous evening. There being no resist injuries the only inference possible in the circumstances is that the respondent caused them before or after her death.

(v) The disheveled hair and the disturbed dress with the blouse and being open show that there was a struggle before her death. Her feet were touching the floor. There is no evidence to show that the cardboard box alleged to have been by the side of body could have borne her weight.

(vi) The conduct of the respondent in rushing to the police station without going inside the house and finding out weather she was dead also relevant.

(vii) The ‘thali’(mangalsutra) was not on the neck of the deceased but was with the respondent.

37- The Hon’ble Apex Court therefore under the aforesaid circumstances has held that the circumstances lead to only one conclusion, i.e. the accused is guilty. In the instant case as we have already observed that the accused/appellant had strong motive to put the deceased out of way, more so he was the only other occupant of the house, in which his wife met the unnatural end, further the appellant did not try to save the wife as per the oral testimony of the witnesses and he was simply standing in the kitchen, further the accused/appellant did not sustain any burn injury on his person which may suggest that the accused/appellant had in fact tried to save his wife, further there is no evidence that the things kept inside the kitchen were found disturbed and lastly the conduct of the accused/appellant in rushing to the police station for lodging the report without making any effort to save his wife, are all these circumstances which lead to only one conclusion, that is, the accused is guilty.

38- In view of the above discussion, we are of the view that the prosecution has successfully established the guilt of the accused/appellant under Sections 302/201 I.P.C. We don not find any sufficient ground to set aside the judgment and order dated 30-7-1992, passed by the learned Sessions Judge, convicting the accused/appellant for the aforesaid crime.

39- The appeal being devoid of merit, is liable to be dismissed.

40- Accordingly the appeal fails and is dismissed. The judgment and order dated 30-7-1992, passed by the learned Sessions Judge in S.T.No. 28/1998 State versus Sushil Nautiyal convicting the accused/appellant under Sections 302/201 I.P.C. and sentencing him to undergo life imprisonment U/s 302 I.P.C. and three years R.I. U/S 201 I.P.C. is hereby confirmed.

41- Let the record of the court below be immediately sent back so that the C.J.M. concerned may take necessary steps for taking the accused appellant in custody in order to serve out the sentence imposed against him.

(B.C.Kandpal,) **(P.C.Vema,J)**

ISB